THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4615 of 1999

21.3.2006

-

Between:

K.Muralidhar Rao, S/o.Viswanatha Rao

And another

… Petitioners

AND

Municipal Commissioner, Nalgonda Municipality

And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4615 of 1999

ORDER:

Two petitioners are residents of Nalgonda town. The first petitioner also claims to be the president of Vaidik Ashram, which is an organisation of Arya Samaj. The property bearing house Nos.6-1-24, 6-1-33/D, 6-1-56, 6-1-57 and 6-1-57/A situated at Ramgiri in Nalgonda allegedly belongs to the petitioner. It is alleged that when there was a threat of demolition of various houses/buildings situated at Ramgiri area, Nalgonda House Owners Welfare Association filed a writ petition being W.P.No.18529 of 1997 before this Court and initially the Court passed interim orders directing the respondents not to demolish the houses/ buildings without due process of law. Subsequently, in similar writ petitions, this Court passed orders on 14.10.1997 directing the District Judges concerned to appoint Advocate commissioners to verify whether the public authorities demolished the houses/buildings by adopting coercive methods without following due process of law. The petitioners state that the learned Principal District Judge, Nalgonda by proceedings dated 28.11.1997 appointed Sri Munagala Narayana Rao, as Advocate commissioner for local inspection. He executed the commission and submitted a report to the effect that the authorities demolished the houses of various persons without following the procedure under law and without initiating steps for acquiring the land. One of the properties of the petitioner bearing No.6-1-57 was leased out to Government Boys Hostel, Ramgiri and the compound wall of the said building was demolished by the respondents ignoring the orders of this Court. Subsequently, the fourth respondent issued notice bearing No.B/9720/97, dated 08.12.1998 to the petitioners giving seven (7) days time for submitting explanation. The petitioner submitted explanation but without considering the same, it was rejected on 18.1.1999. The compensation was not determined by the Mandal Revenue Officer (MRO). Therefore, the petitioners contend that the demolition of the structures and non-payment of the compensation is in violation of the fundamental rights of the

petitioner. Therefore, they filed the instant writ petition seeking a direction to the respondents not to lay the road in the property of the petitioners without paying the compensation for the structures which were already demolished.

The third respondent (District Collector) and the fourth respondent (MRO) have filed two separate counter affidavits. A reading of these two counters would show that after issuing notice dated 08.12.1998 and considering the explanation submitted by the petitioner, the fourth respondent by proceedings dated 18.1.1999 decided that the properties claimed by the petitioners are coming under the road alignment and that the shops were constructed by the petitioners unauthorisedly by occupying the government land. Therefore, as the petitioners failed to remove the encroachment on the road, the respondents removed them. It is also stated that when once the land belongs to the government or forms part of the road alignment, there was no necessity to pay the compensation.

Learned Counsel for the petitioner relies on the report of the Advocate commissioner, Sri M.Narayana Rao, submitted to this Court, in support of the contention that the properties of the petitioners were demolished in highhanded manner without paying compensation and, therefore, the petitioners are entitled to compensation as directed by this Court in W.P.No.18529 of 1997 dated 06.2.1998. **Per contra**, learned Assistant Government Pleader for Municipal Administration relied on the observations made by the Division Bench of this Court in W.P.No.18529 of 1997 and submits that if the property occupied by any person is the property of the government, compensation need not be paid.

There is no dispute that Nalgonda House Owners Welfare Association filed W.P.No.18529 of 1997 seeking a writ of Mandamus declaring action of the respondents in interfering with possession and enjoyment of the properties of the members of the petitioner association as illegal and arbitrary. This Court having noticed that in connection with various developmental works including the work of road widening, government initiated action, in some cases without referring to the land acquisition, gave certain guidelines. The relevant observations are as under.

> If the authorities viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupant/s calling upon him/them to show cause as to why the proposed action shall not be taken. In receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorised occupation and shall determine whether the property in question belongs to the government or any other local self government authority or to the occupant/s. In case of demolition of the private property, the Mandal Revenue Officer or the authorities concerned shall determine the loss caused to the occupant/s on the basis of the assessment to be made by the Engineer of Roads & Buildings Dept. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount quantified forthwith. If the demolition took place is in respect of the property of the government, the question of payment of damages will not arise.

A reading of the above would show that if any demolition is in respect of the property of the government, the question of payment of damages will not arise. In the face of these observations, whether the petitioners are entitled to any compensation? I am afraid, the petitioners cannot be paid any compensation. Though strong reliance is placed on the report of the Commissioner appointed by learned District Judge, Nalgonda, pursuant to the orders of this Court in W.P.No.18529 of 1997, there is no material placed before this Court that the findings recorded by the Advocate commissioner were also in respect of Ramgiri area especially the properties allegedly owned by the petitioners. On the contrary, there are undisputed averments made by the respondents 3 and 4 that notice was issued to the petitioners to prove their title, that they failed to place any material and failed to remove the unauthorised construction on the road and, therefore, the structures were demolished. This would certainly lead to an inference that the observations made by the Advocate commissioner that persons, whose structures were demolished, are entitled to the compensation, have no application to the case of the petitioners. To reiterate, the petitioners were given notice and the petitioners submitted explanation, and it is only after considering the explanation, the MRO issued proceedings on 18.1.1999 deciding that the properties of the petitioners are coming under road alignment and that the mulgies are constructed in road boundary area by encroaching road margin. Therefore, the petitioners are not entitled to any compensation.

The writ petition, for the above reasons, is dismissed. No costs.

_____

(**V.V.S.RAO,J**)

March 21, 2006

YS